February 4, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Avenue, N.W.
Washington D.C. 20551

BY FACSIMILE TO (202)452-3102
AND BY EMAIL TO
regs.comments@federalreserve.gov

Re: Docket Nos. R-1167, R-1168, R-1169, R-1170, R-1171

Dear Ms. Johnson:

This comment concerns recent proposed rulemaking by the Federal Reserve Board ("FRB") that attempts to define a common standard for "clear and conspicuous" disclosures in a variety of regulatory contexts. The FRB's November 26, 2003 release accompanying proposed rulemaking dealing with five consumer protection regulations (Regulations B, E, M, Z and DD) indicates that the new rules are driven by a twofold goal. First, they are intended to help ensure that customers receive noticeable and understandable information in obtaining consumer financial products and services. Second, the release states that the rulemaking would provide for greater consistency that would facilitate compliance by institutions.

The FRB's goals are laudatory, but we do not believe the proposed rulemaking furthers those objectives. First, the rules do not address any perceived failure of existing regulations to ensure that noticeable or understandable information is provided. In short, there is no demonstrated need for revised regulations. There are tremendous costs associated with new rules of this nature, including the cost of new forms and computer system changes. While significant, we believe these costs are dwarfed by the costs associated with the regulatory uncertainty and litigation that inevitably results from a new legal standard. The Board's proposal seems to be an invitation to judges to apply subjective assessments of the degree to which a term or disclosure was "readily understandable by the consumer." Disclosure practices under existing regulations have developed following years (in some cases decades) of regulatory guidance and caselaw. Dismissing prior caselaw and subjecting institutions to legal exposure as a result of the imposition of new subjective standards should not be imposed absent a compelling need, and we do not believe such a need has been demonstrated here.

Second, the goal of achieving greater consistency might make sense were these regulations just now being crafted for the first time. Since they are not, however, we believe that such a benefit is outweighed by the far more significant costs the rulemaking would entail. Furthermore, where, as here, the subject matter of each of these regulations is so wide-ranging, we believe that the benefits of achieving consistency are largely only theoretical. The disclosures required to further the purposes of the Electronic Funds Transfer Act and Regulation E are different enough

from those required under, say, the Equal Credit Opportunity Act and Regulation B, that it is of no value to come up with a common disclosure standard. To put it another way, the "devil is in the details," and common general disclosure protocols are meaningless and unnecessary.

We note that if there are instances of deficient disclosures by financial services providers, these are more likely to arise from inconsistent application and enforcement of existing regulations than from any inadequacy in those regulations. National banks such as TCF are subject to ongoing examinations by the Office of the Comptroller of the Currency, and this includes regulatory oversight dealing with consumer disclosures. Other Federal agencies, including the FRB, conduct similar examinations of institutions they supervise. If there are inadequacies and inconsistencies in consumer disclosures, we believe they would be more likely to arise from inconsistent or insufficient enforcement by existing regulatory authorities, including non-Federal banking regulators, and that regulatory revisions such as those contemplated by the proposed rulemaking will do nothing to improve consumer disclosures, or to make them more uniform.

We urge the FRB to carefully weigh the heavy costs imposed by this rulemaking against what we believe is an insufficiently compelling benefit, and to abandon the notion that new rules are needed to impose common clear and conspicuous disclosure standards.

Thank you for the opportunity to comment on this proposal.

Very truly yours,

Joseph T. Green
General Counsel